

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ILEANA RIVERA, et al.,

Plaintiffs : **CIVIL ACTION NO. 3:17-1126**

v. : **(MANNION, D.J.)
(MEHALCHICK, M.J.)**

**U.S. DEPT. OF HOUSING AND
URBAN DEVELOPMENT,**

Defendant :

MEMORANDUM

Pending before the court is the report and recommendation of Magistrate Judge Mehalchick, (Doc. 26), which recommends that the court dismiss this case filed by *pro se* plaintiff Ileana Rivera, on behalf of herself and on behalf of her daughter, Andrea Ramirez, due to the failure of the plaintiffs to timely file an amended complaint as directed by the court.

Previously, on June 10, 2019, Judge Mehalchick issued a report, (Doc. 22), and recommended that the court grant defendant HUD's motion to dismiss, (Doc. 15), since the plaintiffs' complaint failed to invoke the court's subject matter jurisdiction, pursuant to Fed.R.Civ.P. 12(b)(1), and failed to state a cognizable claim pursuant to [Fed.R.Civ.P. 12\(b\)\(6\)](#).¹

On July 8, 2019, the court adopted Judge Mehalchick's report and

¹As the court previously noted, Rivera cannot represent Ramirez in this case. See [Murray on behalf of Purnell v. City of Philadelphia](#), 901 F.3d 169, 170 (3d Cir. 2018) ("Although an individual may represent herself or himself *pro se*, a non-attorney may not represent other parties in federal court.").

granted defendant HUD's motion to dismiss. (Docs. 23 & 24). The court also dismissed plaintiffs' complaint, (Doc. 1), without prejudice and directed plaintiffs to file an amended complaint within 30 days. (Doc. 24). Further, the court warned plaintiffs that their failure to file their amended complaint as directed would result in a dismissal of their case.

This case was then recommitted to Judge Mehalchick. Since plaintiffs failed to timely file their amended complaint as directed, Judge Mehalchick *sua spone* extended the time to file their pleading to September 12, 2019. (Doc. 25). Despite the extension, plaintiffs failed to file their amended complaint.

Thus, on October 10, 2019, Judge Mehalchick issued her instant report recommending that, pursuant to the Poulis² factors, plaintiffs' case be dismissed for failure to file their amended complaint.

On October 29, 2019, plaintiff Ileana Rivera filed a "Motion in objection"

²The Third Circuit has identified six factors a court should consider before dismissing an action for failure to prosecute:

- (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

[Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 868 \(3d Cir. 1984\).](#)

to Judge Mehalchick's report, (Doc. 27), explaining that she was unable to timely file an amended complaint because she had to go to Puerto Rico to care for her sick mother. As such, plaintiff Rivera requests additional time to file an amended complaint.

Based on plaintiff Rivera's explanation, the court will not dismiss this case and will afford plaintiffs additional time to file their amended complaint.

Based on the foregoing, Judge Mehalchick's report will be **NOT BE ADOPTED**. The plaintiffs will be **GRANTED** leave to file an amended complaint by **November 29, 2019**. No further continuances will be granted.

An appropriate order shall issue.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

Date: November 7, 2019

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